Alabama	4	Missouri	5
Arizona	1	Nevada	1
Arkansas	4	New Jersey	6
California	3	New York	5
Colorado	1	North Carolina	4
Connecticut	1	Ohio	2
District of Columbia	4	Oklahoma	1
Florida	4	Oregon	1
Georgia	6	Pennsylvania	2
Indiana	2	South Carolina	6
Kentucky	8	Tennessee	6
Louisiana	3	Texas	12
Maryland	5	Virginia	126
Massachusetts	1	Washington	1
Mississippi	3	West Virginia	13
		Total	241

There have been no material alterations in the curriculum, and no changes in the Faculty.

LIABILITY OF COUNTIES AND OF COUNTY HIGHWAY OFFICIALS FOR INJURIES RESULTING FROM DEFECTIVE HIGHWAYS.—It is practically the universal rule in the United States to hold cities and corporate towns to a strict liability in cases of personal injuries resulting from defects in highways. Counties, on the other hand, are held not liable with almost equal unanimity. The arguments on principle for fixing this liability on cities, while counties are exempt from it, are not impressive, but the liability of cities is so well settled that discussion would not be profitable.

The non-liability of counties was originally settled on the authority of the case of *Russell* v. *Men of Devon*.[1] Although it is now generally admitted that there is little analogy between an English shire of the eighteenth century and an American county, the rule has been steadily adhered to on various grounds of justification. It is usually said that counties are involuntary political subdivisions of the state, organized for governmental purposes, and hence should be no more liable for the acts or omissions of their officers than the state itself.[2] But arguments of a practical nature carry more weight. It has been urged that if counties are held liable for such injuries, they would be in danger of bankruptcy from the vast number of actions which would arise.[3] The best ground on which to base the rule is probably that of policy. If the liability were upon the counties, the local highway officers would

[1] 2 Term R. 667, 100 Eng. Reprint 359.

[2] Board *v.* Allman, 142 Ind. 573, 42 N. E. 206; James *v.* Wellston Township, 18 Okla. 56, 90 Pac. 100, 13 L. R. A. (N. S.) 1219; Snethen *v.* Harrison County (Iowa), 152 N. W. 12.

[3] Cones *v.* Benton County, 137 Ind. 404, 37 N. E. 272.

be encouraged in laxness and inattention to duty, and the door would be opened to collusion between travelers and officials with resultant fraud.

The foregoing considerations apply, of course, only where the subject is not controlled by statute. The county is purely a statutory creation and as such may be impressed with any liability which the legislature can constitutionally impose. In a few jurisdictions the counties bear this liability by statute,[4] but apparently only in Maryland is the liability upheld without specific statutory enactment.[5] If the injuries complained of arise, however, from a defective bridge instead of road, the liability of the county is much more widely upheld,[6] no doubt for the reason that it was the duty of the shires at common law to keep the bridges in repair, the *bridbot* being levied for that purpose.

But a question of greater interest and one on which considerable conflict of authority has developed, is that of the *personal* liability of local highway officials in cases where injuries of this character have occurred on highways under their charge. The general principle has long been recognized that a public official who is entrusted with a ministerial office is personally liable to individuals who suffer special damage either by his *misfeasance* or by his *nonfeasance*.[7] But the courts long refused to apply this principle to cases of commissioners of highways.[8] It was not until the case of *Hover* v. *Barkhoof*[9] that the principle was first applied to highway cases. In that case the rule was clearly laid down that when a highway has become defective owing to the negligence of a local highway official, and a traveler suffers injuries by reason of such defect, then the official is personally liable in damages to the extent of such injuries.

The doctrine of *Hover* v. *Barkhoof* has been widely, but by no means universally followed. The whole difficulty appears to arise from a confusion as to the nature of the duty owed by the officials to the public. The cases which hold contrary to *Hover* v. *Barkhoof* proceed upon the assumption that the duties of the highway commissioner are discretionary; that defects resulting from his administration of road matters are merely errors of judgment, for which he is not civilly liable if injuries result from them; and hence if he is to be proceeded against at all for his neglects, such proceed-

[4] Blum *v.* Richland County, 38 S. C. 291, 17 S. E. 20; Watkins *v.* Preston County, 30 W. Va. 657, 5 S. E. 654. But in several Northern and Western states, this liability is imposed by statute upon the townships.

[5] Hartford Co. *v.* Hause, 106 Md. 439, 67 Atl. 273.

[6] Without Statute: Pa., Iowa and Md. By Statute: Ala., Kans., Ga., S. C., W. Va., Mass., Neb., N. J., and perhaps others.

[7] Adsit *v.* Brady, 4 Hill (N. Y.) 630; Amy *v.* Supervisors, 11 Wall. 136.

[8] Bartlett *v.* Crozier, 17 Johns. 449, 8 Am. Dec. 428; Chosen Freeholders *v.* Strader, 18 N. J. L. 108

[9] 44 N. Y. 113.

ing can be only by presentment.[10] In other words, when the duty of keeping the roads in repair is imposed upon a highway commissioner, that duty is a public one, which does not confer a private right nor impose a private duty as to third persons. It was said in the recent decision of *Snethen* v. *Harrison County* (Iowa), 152 N. W. 12: "It is insisted that the individual members of the board of supervisors who were actively engaged in the work are liable personally. But as they were engaged in a public work in virtue of their office, the rule of nonliability applies to them, as well as to the body for which they were acting."

This position does not appear very strong. The clerk is liable in damages if he neglects to record the deed; the sheriff if he neglects to serve the writ. Why not the road commissioner if he neglects to repair the road and a traveler thereby suffers injury? The matter is very clearly put in *Hover* v. *Barkhoof:*[11] "It is held that commissioners of highways owe . . . no duty to individuals, but owe a duty to the public at large. Is this position tenable? The public is composed of individuals; and every individual who travels is interested in the discharge of the duties of these offices. . . . Their compensation is paid for and on behalf of such individuals; and thus these public officers are brought into relations with every individual who has an interest in the discharge of their duties just as much as if individuals directly paid the compensation for their services."

The highway commissioner has a special duty to perform, just as much as the clerk or the sheriff; he has to use ordinary care and prudence to keep the highways in a reasonably safe condition for travel. He owes this duty to travelers along such highways, and his failure to perform it is, when special damage results, a tort for which he should respond in damages. This view is also supported by several recent decisions.[12]

Policy has been invoked to support the rule of non-liability on the ground that it would be impossible to get road commissioners to serve with such a liability attaching to the office.[13] But no notable dearth of commissioners seems to have occurred in jurisdictions where the liability attaches. Furthermore, policy should suggest still more strongly that such liability would provide an additional incentive to the officials to discharge their duties in a proper manner.

Some cases have arisen where the injury complained of resulted from the negligence, not of the commissioners themselves, but of

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[10] Templeton *v.* Beard, 159 N. C. 63, 74 S. E. 735; Neville *v.* Vines, 115 Ill. App. 364; Dunlap *v.* Knapp, 14 Ohio St. 64, 82 Am. Dec. 468. Snethen *v.* Harrison County (Iowa), 152 N. W. 12.

[11] 44 N. Y. 113.

[12] Tholkes *v.* Decock, 125 Minn. 507, 147 N. W. 648, 52 L. R. A. (N. S.) 142; Doey *v.* Cook, 126 Cal. 213, 58 Pac. 707, 77 Am. St. Rep. 171.

[13] Worden *v.* Witt, 4 Idaho 404, 39 Pac. 1114, 95 Am. St. Rep. 70.

independent contractors employed by them.[14] It has been held that such contractors are not liable, unless the commissioners themselves would have been under like circumstances.[15] But the better rule is in favor of their liability, irrespective of the liability of the commissioners. An independent contractor owes a general duty to all persons to perform his work in a careful manner, so that no harm shall befall anyone. There appears to be no sound reason why a road contractor should receive exemption from the operation of this rule. He is liable in tort to which his contract with the county officials was only an inducement, and such appears to be the weight of authority.[16]

LIABILITY OF AGRICULTURAL SOCIETIES FOR INJURIES TO VISITORS AT FAIRS.—The principal functions of agricultural societies are to stimulate interest in agriculture, stock raising, and similar industries, and to furnish harmless and instructive amusement to the public. One of the most usual and effective methods of performing these functions is by holding fairs or expositions, at which premiums are offered for the best exhibits of products of the above mentioned industries, and to which large numbers of people are attracted, partly by an interest in the industries represented and partly by the amusements afforded. Interesting questions often arise as to the liability of these societies for injuries to visitors at their fairs, arising out of the negligence of the society, its officers or agents, or that of proprietors of places of amusement located on the fair grounds. In the decision of these questions, the first and most important thing to consider is the nature of the society: whether it is a public corporation acting as a department or agent of the government or a mere private corporation. On account of the vast public importance of the interests for the promotion of which these societies exist, they must necessarily assume something of a public nature; but in the final analysis their character depends entirely upon the statutes under which they are created.[1]

Since they are not political or territorial subdivisions of the state created by the state for the sole purpose of administering local civil government, they are clearly not municipal corporations.[2]

In the great majority of the states they are voluntary organiza-

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[14] These cases may become of great importance if the system of road repair now installed in Massachusetts is generally adopted. Under this system permanent local contractors are given charge each of a few miles of highway which they are to keep always in repair without special directions from the highway officials.

[15] Schneider *v.* Cahill, (Ky.), 127 S. W. 143, 27 L. R. A. (N. S.) 1009.

[16] Wade *v.* Gray, 104 Miss. 151, 61 Sou. 168, 43 L. R. A. (N. S.) 1046; Solberg *v.* Schlosser, 20 N. D. 107, 127 N. W. 91.

[1] Dunn *v.* Brown County Agricultural Society, 40 Ohio St. 93, 18 N. E. 496, 15 Am. St. Rep. 556, 1 L. R. A. 754; Lane *v.* Minn. St. Agricultural Society, 62 Minn. 175, 64 N. W. 382, 29 L. R. A. 708; Downing *v.* Ind. St. Bd. of Agriculture, 129 Ind. 443, 28 N. E. 123, 614, 12 L. R. A. 664; Minear *v.* St. Bd. Agriculture, 259 Ill. 549, 102 N. E. 1082, Ann. Cas. 1914B, 1290.

[2] See 1 DILLON, MUNICIPAL CORP. (5th ed.), § 34.